



# California Regional Water Quality Control Board

## Santa Ana Region



Linda S. Adams  
Secretary for  
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221  
[www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

Arnold Schwarzenegger  
Governor

September 21, 2010

Mr. Chris Miller  
Harbor Resources Manager  
City of Newport Beach Harbor Resources Division  
829 Harbor Island Dr.  
Newport Beach, CA 92660

### **CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE RHINE CHANNEL DREDGE PROJECT, CITY OF NEWPORT BEACH, CA**

Dear Mr. Miller:

On July 22, 2010, we received an application from the City of Newport Beach (Applicant) for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the proposed dredging of the Rhine Channel (Project). This letter responds to your request for certification that the proposed Project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan (Basin Plan) for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

**Project description:** Dredging a total of approximately 150,000 cubic yards of contaminated sediment from the Rhine Channel and portions of the area adjacent to Marina Park, the American Legion, and the 15<sup>th</sup> Street Pier located within Lower Newport Bay. The sediment has been determined to be unsuitable for unconfined ocean disposal under Regional General Permit (RGP) 54, issued by the U.S. Army Corps of Engineers (USACE). The material will be dredged using a mechanical dredge and an excavator dredge and will be beneficially reused as fill material for the Port of Long Beach Middle Harbor Project. The material will be conveyed via scow to the Port of Long Beach. Work will occur during a period of 4 to 5 months beginning late 2010 or early 2011, dependent upon the Port of Long Beach project timeline. The dredge site is located within an un-sectioned portion of Township 6 South, Range 10 West, of the U.S. Geological Survey *Seal Beach, California*, 7.5-minute topographic quadrangle map (33.61525 degrees N/ -117.927689 degrees W).

***California Environmental Protection Agency***



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Receiving water: Pacific Ocean and Lower Newport Bay

Fill area: N/A

Dredge/Fill volume: approximately 150,000 cubic yards (18.2 acres at the dredge site).

Federal permit: Individual U.S. Army Corps of Engineers 404 Permit – Permit number not available

Should the proposed Project impact State- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with the U.S. Fish and Wildlife Service and California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. The Project is subject to a permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Water Board is required to consider an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND) prepared by the lead agency in determining whether to approve a Section 401 Certification. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project that it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Section 15091. The City of Newport Beach adopted and approved a Mitigated Negative Declaration for the Project on July 27, 2010. In the issuance of this Certification, the Executive Officer has considered those sections of the City's MND that relate to water quality. Based on the mitigation proposed in the MND and the conditions set forth in this Certification, the Regional Water Board independently finds that measures, changes or alterations have been required or incorporated into the Project that avoid or substantially lessen impacts to water quality and that beneficial uses will be protected.

**This 401 Certification is contingent upon the execution of the following conditions:**

1. The discharge of trash and debris into waters of the U.S., which may cause a nuisance or adversely affects beneficial uses, is prohibited.
2. A water quality monitoring plan (WQMP) shall be developed and implemented to document compliance with the requirements specified in condition 3, below. The WQMP is required to include a Sampling and Analysis Plan (SAP) and a Quality



Assurance Project Plan (QAPP) that are State Surface Water Ambient Monitoring Program (SWAMP)<sup>1</sup>-compatible. The WQMP, SAP and QAPP must be implemented upon Regional Board staff approval, and prior to Project commencement.

3. The Project shall comply with the following:

- a. The sampling parameters established in the WQMP/SAP shall include the constituents for which numeric targets are specified in the U.S. EPA Toxics TMDLs<sup>2</sup> for the Rhine Channel, at a minimum.
- b. Project activities must not depress the dissolved oxygen content of receiving non-ocean waters (i.e. Rhine Channel and Lower Newport Bay) below 5 mg/L as a result of controllable water quality factors. When natural dissolved oxygen content is less than 5 mg/L, the discharge must not cause further depression.
- c. Project activities must not raise the pH of receiving non-ocean waters above 8.6 or lower pH below 7.0 as the result of controllable water quality factors; ambient pH levels must not be changed by more than 0.2 units.
- d. Project-related activities shall not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in receiving non-ocean waters to be increased by values greater than the following Basin Plan objectives at a distance of 100 feet from the activity:
  1. If natural turbidity is between 0 and 50 NTU, the maximum increase shall not exceed 20% of the measured natural turbidity.
  2. If natural turbidity is 50 to 100 NTU, the increase shall not exceed 10 NTU.
  3. If natural turbidity is greater than 100 NTU, the maximum increase shall not exceed 10% of the measured natural turbidity.

4. The U.S. Army Corps of Engineers<sup>3</sup> indicate that the Clean Water Act Section 404 permit for this Project will include conditions that will govern the transport of the dredged sediments from Newport Bay to the Port of Long Beach. Additionally, the

<sup>1</sup> SWAMP-compatible QAPP template is found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/swamp/docs/qapp/2008\\_qapp\\_template.doc](http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/qapp/2008_qapp_template.doc)

<sup>2</sup> This document is located under San Diego Creek, Newport Bay Toxics TMDL at: <http://www.epa.gov/region9/water/tmdl/final.html>

<sup>3</sup> Email from Robert Smith, U.S. Army Corps of Engineers to Wanda Cross, Santa Ana Regional Water Board on September 16, 2010.



Applicant shall implement appropriate best management practices (BMPs) including but not limited to those identified in the MND, to ensure that spillage is minimized to the maximum extent practicable during the transport of dredged material from Rhine Channel to the Port of Long Beach.

5. Any suspected violation of these conditions must be reported to Regional Water Board staff by email within 24-hours of discovery. The monitoring plan and records of monitoring activities must be maintained on site for the duration of the proposed discharge and be available for inspection by Regional Board staff.
6. This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
7. The Applicant must comply with the requirements of the applicable Clean Water Act Section 404 permit.

**Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:**

1. Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
2. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required under this Chapter and owed by the Applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Water Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.



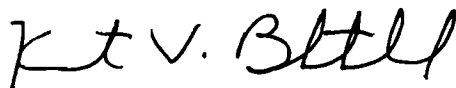
In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at:

[http://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/generalorders/go\\_wdr401regulated\\_projects.pdf](http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf)

Should there be any questions, please contact Wanda Cross at (951) 782-4468.

Sincerely,



KURT V. BERCHTOLD  
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Larry Smith  
U. S. Army Corps of Engineers, San Diego Office – Robert Smith  
State Water Resources Control Board, OCC – David Rice  
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme  
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

